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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 **(San Jose Division)**

11 Martin Eric Findley,

12 Plaintiff,

13 v.

14 Carolyn Colvin, Commissioner of Social  
Security,

15 Defendant.

Case No. 5:14-cv-03581-BLF

**Status Report Re: Summons and Motion  
and Order Extending Time for Service**

The Hon. Beth Labson Freeman

17 MARTIN ERIC FINDLEY, Plaintiff, by and through counsel, hereby moves this Court to  
18 find good cause or to exercise discretion to extend time for service of the summons under Fed. R.  
19 Civ. P. 4(c)(1), Fed. R. Civ. P. 4(c)(3), and Fed. R. Civ. P. 4(m) and 28 U.S.C. 1915. Plaintiff  
20 requests that time for service be extended by a sufficient number of days to allow service of the  
21 Summons issued on December 19, 2014 to be executed by US Marshal for the reasons explained  
22 in this motion and the accompanying declaration.

23 **DECLARATION**

25 I, Lisa Douglass, declare as follows:

27 1. I am counsel for the Plaintiff in the above-captioned case appealing a final order of

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1 the Social Security Administration denying disability benefits under the Social Security Act.

2 2. I have personal knowledge of the following facts.

3 3. My office filed the complaint in this matter on August 7, 2014 along with a Motion  
4 for Leave to Proceed in forma pauperis. This filing was done manually, in person, at the Clerk's  
5 office. The complaint, cover sheet, and motion were e-filed by the Clerk's office.

6 4. The Motion to Proceed in forma pauperis was granted on August 18, 2014.

7 5. After the motion was granted, I assumed that service would be executed by US  
8 Marshal. Fed. R. Civ. P. 4(c)(3) rule provides that the Court "must" order that service be made by  
9 a United States marshal or deputy marshal or by a person specially appointed by the court, when  
10 the plaintiff is, as here, authorized to proceed in forma pauperis under 28 U.S.C. 1915.

11 6. However, I had failed to note that the Order Granting Application for Leave to Proceed  
12 in forma pauperis entered by this Court on August 18, 2014 did not contain language ordering the  
13 US Marshal to "serve, without prepayment of fees, a copy of the complaint, any amendments,  
14 scheduling orders, attachments, plaintiff's affidavit and this order upon the defendant." This is the  
15 language used in the Court's form Proposed Order and in the other orders our office had received  
16 in prior cases. I wrongly assumed that summons would be issued and that service would be  
17 executed by US Marshal prior to the 120 day due date, as in my prior IFP cases.

18 7. On December 10, 2014, I received, and responded to emails, from Court staff  
19 inquiring about status of service, which was due on December 5, 2014. On December 16, 2014  
20 this Court entered an order requesting status update. On December 18, 2014, I filed a proposed  
21 summons. On December 19, 2014, summons were issued as to Carolyn Colvin, U.S. Attorney and  
22 U.S. Attorney General along with accompanying 285 forms authorizing service by US Marshal.

23 8. Fed. R. Civ. P. 4(m) provides that the court "shall extend time for service for an  
24 appropriate period" if plaintiff "shows good cause" for the failure to serve within 120 days and  
25 permits the district court to grant such an extension even absent good cause. *See Henderson v.*  
26 *United States*, 517 U.S. 654, 662, 116 S.Ct. 1638, 134 L.Ed.2d 880 (1996). District Courts have  
27 broad discretion to extend time for service under Rule 4(m). *See Henderson v. United States*, 517

1 U.S. 654, 661, 116 S.Ct. 1638, 134 L.Ed.2d 880 (1996) (concluding that “the 120-day provision  
2 operates not as an outer limit subject to reduction, but as an irreducible allowance”); *Mann v.*  
3 *American Airlines*, 324 F.3d 1088, 1090-91 (9<sup>th</sup> Cir. 2003).

5 9. Plaintiff, through counsel, requests the court find good cause or exercise discretion to  
6 extend the time for service in this case.

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By: /s/ Lisa Douglass  
LISA DOUGLASS  
Director, Social Security Disability Project

Attorneys for Plaintiff

## ORDER

6 Under Fed.R.Civ.P. 4(m) this Court exercises its discretion and orders that the time for  
7 service be extended by 11 days for the US Marshal to execute service of the Summons and  
8 Complaint as to Carolyn Colvin, US Attorney and US Attorney General.

Dated: Ræg æt Å ÆGÆFÍ

Beth Labson Freeman  
THE HONORABLE BETH LABSON FREEMAN  
United States District Judge